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October 7, 2011

Inability to Deliver E-mail Opt-Out Notice to Certain Former Borders Customers

Dear Honorable Judge Glenn:

I write to bring to the Court's attention that certain technical, operational and other difficulties have precluded my client, Barnes & Noble, Inc. ("B&N"), from complying with one of the requirements set forth in this Court's September 27, 2011 order approving the sale of certain IP assets of Borders to B&N (the "Order"). Specifically, I was informed late yesterday that the database containing the e-mail addresses of those Borders customers who had previously opted out of receiving marketing materials from Borders (the "Marketing Opt-Out Customers") is separate from the database containing the e-mail addresses of the Borders customers who have not so opted out (such customers, the "Non-Marketing Opt-Out Customers"). I was further informed that the databases for the Marketing Opt-Out Customer e-mail addresses and for the Non-Marketing Opt-Out Customer e-mail addresses are maintained by two separate vendors of Borders, and that despite repeated requests by B&N, new hardware purchases by B&N to allow the transfer and other efforts by B&N to facilitate the transfer, the database containing the e-mail addresses of the Marketing Opt-Out Customers has not yet been transferred to B&N. Accordingly, B&N was and remains to date unable to send to the Marketing Opt-Out Customers the e-mail opt-out notice that the Order requires to be sent by B&N on or within one business day after the closing date of the sale of the Borders IP assets to B&N (which occurred on September 30, 2011). The opt-out notice was timely sent to the Non-Marketing Opt-Out Customers, whose e-mail addresses were transferred to B&N at the closing.

In addition to the problem of not having the e-mail addresses of the Marketing Opt-Out Customers, following the closing B&N has been informed by the e-mail service provider that transmits the opt-out notice that certain industry self-regulatory protocols and related operational constraints may make it impractical to send a non-permission based e-mail (which the opt-out e-mail notice would be considered) to customers such as the Marketing Opt-Out Customers who have elected not to receive such e-mails. Accordingly, it may be necessary to treat the Marketing Opt-Out

Customers in the same manner as Borders customers whose e-mail address is not live are treated under the Order or to implement some other mechanism to address this problem.

The interested parties are working to resolve the issues referenced above and other concerns that have been raised in a mutually satisfactory manner. We expect to notify the Court once that has occurred and to seek any appropriate relief at that time. In the meantime, and notwithstanding the adjournment of the hearing previously scheduled for Tuesday, October 11, 2011, we felt it was important to bring this to the Court's attention promptly.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. H. Zumbro', written over the word 'Sincerely,'.

Paul H. Zumbro

Honorable Judge Martin Glenn
United States Bankruptcy Judge for the Southern District of New York
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VIA ECF FILING

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